TRUE BASIS OF A RESTORED REPRESENTATION.

Whoever is protected by the ample folds of our Flag must love its Stars or feel its Stripes.

SPEECH

OF

HON. ULYSSES MERCUR,

OF PENNSYLVANIA,

IN THE HOUSE OF REPRESENTATIVES,

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SPEECH.

The House, as in Committee of the Whole on the state of the Union, proceeded to the consideration of the President's annual message.

Mr. MERCUR said:

Mr. SPEAKER: Motion is said to be a natural condition of all matter. Progress appears to be a law of the world's nature. Much of its past civil progress has been through bloody revolutions. It seems to require a violent upheaving of society to enable it to break loose from the errors or oppressions which encircle it. Our generation and our own people have lately given a striking illustration. During the four years of bloody struggle through which we have just passed more was done toward securing the true principles of democracy than had been done in the half century which preceded it. A revolution of sentiment ends not with the laying down of hostile arms. It was a preëxisting sentiment, hostile to our Government and its institutions, which put arms into the rebels' hands. That evoked a counter opposition. The loyal masses were not content to oppose an equal force only, so that each belligerent should occupy his former ground at the end of the war; each sought to advance. The mighty strength of true democracy has been stirred to its very foundation. We are passing through a great revolution; we have not yet reached the end. True, the millions of Union soldiers are no longer in arms, but have returned to their peaceful avocations; yet still the conflict goes on. The antagonism of minds believing in different forms of government still exists. The old leaven which caused the masses of the South to rise up in rebellion has not been eradicated. Each day's journal gives evidence of outrages as barbarous as those which preceded the open conflict in arms. As war against our institutions existed before the firing upon Fort Sumter, so it has existed since the surrender of the rebel armies.

Nor is it confined within the limits of that portion of our country which was in open rebellion. The men of the North who sympathized and fraternized with the rebels while they were in arms now seek to excuse them and embrace them as brothers guilty of no crime. These men during the war saw nothing on the part of our Government but "executive usurpations" and "constitutional violations." They wanted the war so conducted on our part as not to destroy the rebel armies nor wound their fine sensibilities. In truth, they did so far influence the action of our Government that the war for some year and a half was so conducted as to do the rebels the least possible injury. This was manifested, in part, by a refusal to use the brawny arm of the colored man, and by the sedulous care with which the property of the rebel citizen was protected. As during the conflict of arms every effective effort toward putting down the rebellion was denounced as a violation of the Constitution, so now every effort toward securing the just fruits of our victories is in like manner denounced by the same class of men. With them the Constitution is to be most liberally construed when invoked to screen rebels; but when loyalty and liberty seek protection then it is to receive a strict construction. They would have the rebels restored to all their former relations under the Constitution as if they had been guilty of no crime nor forfeited any rights.

On the contrary, I hold that they have been guilty of the highest crimes and forfeited many of their rights under the Constitution; not only their rights as individuals, but their rights as organized communities. In the incipient stages of the rebellion as well as during its bloody progress they did not act as individuals only, but as States. In fact, they called into exercise and used all the legislative, executive, and judicial powers of their several States. Acting as

States they, so far as they could, withdrew from the Union; as States they changed their laws and constitutions; as States they confederated together and formed a new constitution, a new national union; as States they elected members of Congress and Senators to that new confederate government; acting through that government thus formed they levied taxes, made loans, conscripted men, raised large armies, and for four years waged a bloody war against the Constitution and Government of the United States.

But, say their hair-splitting apologists, they did all this contrary to law; our Constitution and laws forbade it. Their acts had no binding force, hence we must treat all those acts and deeds as if they had never been committed.

Grant that they were all contrary to law; grant that our Constitution and laws expressly forbade them, and that they were of no binding force as against us; yet it by no means follows that we must treat the wrong-doers as if they had committed no crimes. A man has no right to steal your horse; the laws forbid it; yet, in fact, notwithstanding his absence of right, the prohibition of law and the penalties provided against it, he may steal it. By so doing he acquires no legal right to the horse. You may reclaim it wherever found and again reduce it to your possession. But that does not wipe out the thief's offense. He still remains amenable to the law, liable to all its penalties; none the less a felon. As a thief is subject to the punishment inflicted upon those guilty of larceny, so is the rebel who levied war against our Government subject to the punishment inflicted for treason.

No one, however, now proposes to inflict upon the masses of those who are guilty of treason the high punishment prescribed by law. It is one thing to inflict positive punishment upon a rebel; it is quite another thing not to give him a representation in Congress which he voluntarily relinquished and spurned. The one calls into exercise the active vindication of law, the other merely withholds that which he has abandoned and taken an oath not to enjoy under our Government. I desire, however, to have it distinctly understood that I am opposed to a universal amnesty. In my judgment some few at least of the prime movers and controlling spirits of the rebellion ought to be tried for their treason, ought to be convicted, and ought to be punished. Thus treason should be made odious. A loyal national sentiment pleads for it; the best interests of humanity require it; justice demands it.

This, however, lies with the executive and judicial branches of the Government to enforce. The laws heretofore enacted by Congress have fully provided a way for the trial and punishment of all such offenders. There the duties of Congress cease. Where they cease the duties and powers of the Executive begin. The President, says the Constitution, "shall take care that the laws be faithfully executed." Upon him, then, acting through his executive officers, is imposed the obligation of bringing offenders to trial and enforcing the sentences of the courts against them.

We, however, now have another duty to perform. It is to provide the manner in which the people residing in those portions of the country lately in rebellion shall have a restored representation in Congress. Those formerly in authority there voluntarily relinquished that representation. For several years they persisted in depriving themselves of it. They formed new political relations wholly inconsistent with its exercise; they enacted new governments in direct hostility to ours; they wholly repudiated and set at defiance our Constitution and the laws passed in pursuance thereof. It is with that whole people we now have to deal; not so much with the territory which they occupy, as with the inhabitants who dwell thereupon.

Our brave soldiers and seamen did their duty in the bloody conflicts of battle; we must now do ours. The military power of the Government subdued the rebels in arms; Congress must now provide for their restoration to a new-born civil life; not in any vindictive spirit, but "with charity toward all, and with malice toward none," ought we to provide for a restoration. We must not, however, so far extend our charity to those who sought to destroy our Government and dismember the fair proportions of our country as to forget the wants or overlook the rights of loyal men. Nor must we forget those living principles of man's equality which underlie this Government, and which have been reaffirmed in the crucible through which we have just passed.

Article four, section four, of the Constitution declares—

"The United States shall guaranty to every State in this Union a republican form of government."

This clause of the Constitution has received judicial construction showing that the power therein given is lodged in Congress.

The difficulties in regard to the "Dorr government" in Rhode Island in 1841 and 1842 gave rise to the case of Luther *vs.* Borden, which was argued in the Supreme Court of the United States, and is reported in 7 Howard's United States Reports, page 1. The section which I have just cited came under consideration. In the opinion of the court, delivered by Chief Justice Taney, he says:

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to every State a republican form of government, Congress must necessarily decide what government is established in a State before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well

as its republican character, is recognized by the proper constitutional authority, and its decision is binding upon every other department of the Government."

Then, if Congress is to decide "what government is established in a State," and if Congress is to secure "to every State a republican form of government;" if Congress, by the admission of Senators and Representatives, recognizes the "character" of a State; and if the "decision" of Congress in all these respects "is binding upon every other department of the Government," it necessarily follows that all power given to the Government is vested in Congress.

The constitutional powers of Congress over those districts lately in rebellion have been so fully and ably argued by others upon this floor that I shall not weary you, nor surfeit the country, with any extended argument upon that point. I shall consider the power of Congress to impose terms upon those people who sought to destroy our Government as established—established not only to the satisfaction of a large majority of the members of this body, but also to the satisfaction of the people whom they represent.

The Opposition party is persistent in asserting that during, or in consequence of, the rebellion the people of the South lost none of their constitutional rights, and that by the cessation of arms they were immediately restored to all those rights which they had prior to the war. Its members in this House and elsewhere appear to have forgotten that new principles were evolved during the war, that some of them culminated in the enunciation and adoption of those constitutional amendments which abolished slavery. In all their labored arguments they ignore that radical change in the nation's fundamental law. Industrious in their labors of exhuming the resolutions of 1798, and adroit in reciting the doctrines of Calhoun based upon them, they seem oblivious to the amended charter of freedom and the rights flowing therefrom:

"ART. 13. SEC. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"SEC. 2. Congress shall have power to enforce this article by appropriate legislation."

There stands that bright token of liberty, the glory of this generation, and the pride of the Republican party who made it a part of the organic law. As time shall roll into the distant ages of the future, an American citizen will point to it with the same pride that an Englishman now does to the Great Charter which the barons wrung from King John at Runnymede.

By its adoption slavery was legally as fully wiped out, eradicated, and destroyed as if it had never existed as a blight upon our institutions. I have said such was its legal effect, but the framers of this constitutional amendment well knew that slavery was so interwoven with the laws and customs of the States in which it had existed that the mere declaration that it should no longer exist, although a constitutional declaration, would not of itself give to those heretofore enslaved the just and fair protection which its letter and spirit affirmed. They knew that the several States, in which it had existed, could not be relied upon to secure the reasonable and just incidents of freedom. Hence the second section gave "Congress the power to enforce this" amendment, according to its true intent and spirit, "by appropriate legislation."

Here, then, is a new constitutional power which Congress has acquired since the rebellion, and which we are now called upon to exercise.

I submit now, that what might be adjudged a republican form of government under one constitution, might under another be far from it. In other words, in construing our Constitution, regard must be had to the character and spirit of the whole instrument. Nor should the expositor be confined to an examination of the instrument itself alone, but he must look beyond it. He must consider the genius, ruling ideas, progress, and existing sentiments of the great masses of the people governed by it. The Constitution is not to receive that technical construction or interpretation which a learned lawyer gives to a statute or to a common law instrument; but it is to receive such a fair, just, and natural interpretation as will carry out the great principles of the Government, and secure and protect the rights of the masses for whose benefit it was made.

The Constitution of the United States is the people's fundamental law. In the suppression of the rebellion; in the abolition of slavery; and in the recent elections, they have given it form and construction, which not only legislators, but Presidents and judges will do well to notice and to heed.

As long as our national Constitution recognized slavery, Congress could with no justice or sound logic affirm that any State government was not "republican in form" because it denied to a large class, which it held in bondage, political rights. Now the case stands upon a different foundation. By the Constitution all men are made free. By the provisions of the civil rights bill all persons born within the jurisdiction of the United States, or duly naturalized, are made citizens. Hence the form of any State government must now be viewed, and must now be tested, by the whole of our national Constitution and the recognized rights under it. So viewed, and so tested, no State government can, in my judgment, be truly recognized as republican in form, which permanently disfranchises, by rea-

son of race or color, either a majority or a large proportion of its adult male citizens who have been guilty of no crime. Conceding that the right of suffrage is neither a natural nor civil right, yet it is so necessary to protect and secure a citizen in the enjoyment of his civil rights, that in a Government like ours, based upon the will of the people, it is difficult to separate it from a civil right.

The constitutional amendments passed by Congress at its last session are so just in their requirements, so mild in their provisions, that no person ought to object to their adoption by reason of their imposing too severe terms upon those lately in rebellion. With some reason loyal men may complain, that they do not go far enough, that they do not adequately punish rebels, nor sufficiently protect the rights of all loyal men of the South; yet mild and just as they are, their provisions and requirements are spurned by those people lately in rebellion. The masses of the loyal North last autumn declared, that nothing short of the recognition of the principles therein contained would bring peace and security to the nation. We must not disregard that great popular verdict rendered by the people. There must be no yielding up any of their securities, no abandonment of any of their essential requirements. The affirmation of citizenship and of equality of civil rights; the withholding from States a representation based upon loyal men who, as a class, are disfranchised; the temporary exclusion from office of leading perjured rebels; the repudiation of the rebel debt, and a pledge for the payment of the loyal debt, incurred in putting down the rebellion, must not be waived nor rendered uncertain. They are essentially necessary to protect the liberties of our people and to make their rights secure.

I understand civil liberty, under our form of government, to be something more than what Coleridge defined painting to be: "Painting," said he, "is a something between a thought and a thing." Our civil liberty is not thus circumscribed. It is both a thought and a thing. It rests, not in the mind alone, but reaches out its numerous tendrils and clasps as with hooks of steel, the substantial realities of man's existence. As mind and matter are united in man, so are thought and thing in civil liberty. Liberty is insecure, it is of no value, until it becomes a right; not merely asserted as an abstract right, but affirmed as a positive, practical, and living right. It must be incorporated into law which will protect and enforce it.

I am free to confess, that the constitutional amendments now pending before the States do not give all the protection and security which I think due to the loyal people of both the North and the South. Unable last session to get all the securities I desired, I accepted and voted for them. In my judgment the general sentiment of the North during the recent elections was, that if the rebel States would adopt these amendments in good faith, and send loyal men, they ought to have a restored representation in Congress. So believing, and desiring to assist in carrying out the people's will, I have stood ready to thus vote. Instead, however, of adopting them; instead of giving their assent to the correctness of the principles therein enunciated, they have rejected them with scorn. If now, with all their anxiety to have a representation upon the floors of Congress, they will not subscribe to those principles for the purpose of gaining admission, is any man so insane as to believe they would adopt them after they were admitted? Certainly not.

If a majority of the representative men of the South, who enjoy the elective franchise, are determined to continue to stand in opposition to our Government; if they continue to manifest no sympathy with the genius of our institutions; if they can so control and direct the majorities of those to whom they give the right of suffrage as to exclude from official position all loyal men of the South, then indeed they are still in rebellion. They have changed their weapons, but their object is the same. That object, that purpose is to undermine the very foundation upon which this Government rests. They not only ignore the doctrine that our Government derives its just powers from the consent of the governed—not of the few only, but of the many—but they seek to pervert its powers and make it an engine of wrong and of oppression. The numerous murders of colored men, the frequent assassinations of loyal white men, attest the bitter and disloyal sentiment which still rankles in the heart of the unreconstructed rebels. Kindness and executive pardons have failed to subdue their hostile sentiments. Loyal white men are driven from their homes by social and political ostracism, as well as through fear of injury to their persons and their property.

Every loyal citizen is entitled to protection by his Government. We cannot afford to deny it to ours. The golden opportunity is now presented of bringing back our Government to those grand truths proclaimed in the Declaration of Independence; not holding them as "glittering generalities," but as principles imbedded in the hearts of our people; so that we may have in fact, what we have heretofore had in name, a free Government. If we now suffer this occasion to pass unimproved, a century may roll around before so favorable a one is again presented.

We are told, however, by gentlemen in the Opposition, that there is no constitutional power to deny to any rebel State a representation in Congress. It recalls to my mind the declaration so often made at the inception of the rebellion; a declaration made not only by the

head of the Democratic party, but running down through all grades to its most ignorant member. It was, "There is no power in the Government to coerce a State."

The loyal, Union-loving people of the nation answered that assertion. They said we will coerce all persons who are in rebellion in any State, even if they include its entire population. That word was made good. So now the loyal people have said, we can and will deny to rebel States a representation in Congress until they come with constitutions and laws in harmony with our amended Constitution. Unless Congress is recreant to its trust that word will also be made good.

As the Sabbath was made for man and not man for the Sabbath, so civil government was created for the benefit of mankind, and not mankind for the benefit of government. Constitutions and laws are but the instruments which the people have formed, to be used in securing their rights and in protecting them in the enjoyment thereof. As the habits and necessities of a people change, so should their legislation and organic laws change. To deny this, is to check all progress in civil government. In the earlier periods of the world's history, those organic changes were made through the bloody throes of revolution. In framing the Constitution of the United States our forefathers sought to avoid all necessity for those convulsions which deluge a country in blood. Hence they incorporated in the instrument itself, a peaceful method by which it could be changed. They arrogated to themselves no perfection of human wisdom through which they sought to bind future generations. They framed it to suit their then existing wants and necessities, but reserved the right, and pointed out the manner, in which they and their posterity might change it. Thus it is allotted to each generation to make such changes as the advancing civilization of the world requires.

The disdain, with which the governing classes of the South have rejected the mild requirements of the pending constitutional amendments, proves them unfit and unsafe to shape the legislation of this country.

In my judgment the time for other and additional action has now arrived. We must look beyond those classes. The disloyal should no longer be permitted to act the part of the dog in the manger. Now, they neither enjoy the full benefits of our representative Government, nor permit loyal people in their midst to enjoy them. They seem to have forgotten that their every system of slavery has been weighed in the balance by the great popular heart of the nation and has been found wanting; that time nor eternity will not restore it. It has been cast into that vortex where—

"Though the mills of God grind slowly
Yet they grind exceeding small;
Though with patience He stands waiting
With exactness grinds He all."

It is criminal in us if we suffer loyal citizens of the South to be much longer thus deprived of their full rights. They have a right to demand speedy action. While we talk and procrastinate, they suffer. The disloyal, basking in the sunshine of executive sympathy and executive favor, have again raised their heads, and are now consolidating their power. I see no other course left but to give enfranchisement and power to the loyal masses of their citizens. Let the test be loyalty, not race nor color. It is the lowly, the humble, the downtrodden, who most need the protecting arm of the Government. Wealth and high order of intelligence usually secure protection to their possessors; the poor and the ignorant require the aid of the ballot for their protection.

The rights of labor and muscle must not be overlooked nor disregarded. They lie at the very foundation of our national prosperity and our continued existence as one nation. When the unity of our nation was assailed by the recent rebellion; when the peril was so great that every loyal family was compelled to give up some of its loved ones to fill the depleted ranks of our armies; when the conscript submitted himself to the military authorities for examination, no such interrogatory was put to him as "Can you read and write?" nor that other interrogatory, "Does any colored blood flow in your veins?" Neither ignorance of letters; nor race nor color afforded any ground for exemption; vigorous manhood fixed his liability.

Whoever was required to risk his life in the defense of our Government, whoever was required to raise his stalwart arms to oppose that mighty rebellion, has, in my judgment, a sufficient educational qualification to enable him to take a part in shaping the future of that nation whose unity his valor helped to preserve.

I trust, therefore, that the bill this House has lately passed, providing for a restoration of civil government in Louisiana, may become a law; and if found to work well, that its substantial provisions may be extended to all the disorganized communities of the South. Those civil governments, which the President has assumed to establish, are of no binding force. Let the citizens, who are now without any adequate protection, be temporarily protected by our military power. That power should be carefully yet firmly exercised. Rebels must not arrogantly dictate what a loyal people must do; they must be taught that every person who is protected by the ample folds of our flag must love its stars or fear its stripes.

It is my earnest desire that the time may soon come when there shall be such a state of facts existing in all the States lately in rebellion as will admit of their representation being restored; but I do not want to see their Representatives come back here exhibiting that

sense of arrogant superiority which was formerly manifested on this floor. When they take their seats let it be with no assumption of superiority, no admission of inferiority; let it be with sentiments of political equality and of national unity.

By one general test and rule we should fix and determine under what requirements a restoration shall be had. Let us scrape away all the unsound accumulations begotten by slavery till we come to the solid rock, and build anew; then permanency will be given to the structure in which harmony and justice shall commingle. Do not let us subject the people of this nation to a multiplicity of brilliant operations like that which characterized the experiments of a French surgeon. It is related of the late Sir Astley Cooper that on visiting Paris he was asked by the surgeon *en chef* of the empire how many times he had performed a certain wonderful surgical operation. Sir Astley replied that he had performed the operation thirteen times. "Ah," said the Frenchman, "but, Monsieur, I have done him one hundred and sixty times." After looking into the amazed expression of Sir Astley's face he added: "How many times did you save his life?" "I," said the Englishman, "saved eleven out of thirteen. How many did you save out of one hundred and sixty?" "Ah, Monsieur, I lose dem all, but de operation was very *brilliante!*"

So every attempt made to reconstruct without recognizing man's equality may be brilliant to the eyes of those who govern, but fatal to the rights of the people. Any compromise which ignores the rights of a loyal citizen is unworthy of the civilization of the age. There should be no compromise of any of the essential rights of citizenship. Several compromises have been made with slavery in our past history, but perfidy has marked their paths. We must not forget that the destiny of this nation is now to be shaped. Principles are now to be settled which will leave their impress upon countless ages of the future. No veneering spread over great national wrongs, no ignoring the fundamental rights of all our citizens, can faithfully represent the deeply-seated convictions of the American people. The conflict of arms through which the nation has passed, the treasures expended, and blood shed by the people in defense of their cherished rights and institutions, must not have been in vain. The civil arm of this Government must give logical effect to the sturdy blows struck by our brave soldiers in their many bloody conflicts. If it fails to protect the fair and natural fruits of the victory won by the sword it will be false to the great principles of liberty and justly merit the condemnation of the civilized world. I, however, have an abiding faith that the people, who could preserve their institutions against the criminal weakness of a Buchanan and the machinations of a Johnson, will transmit them unimpaired to posterity.